

Internal Revenue Service

memorandum

CC:TL-N-6974-89

Br4:RJFitzpatrick

date: JUL 18 1989

to: District Counsel, Thousand Oaks
Attn: Steve Roth

CC:TO

from: Assistant Chief Counsel (Tax Litigation)

CC:TL

subject: [REDACTED]

This is in response to your request for Tax Litigation advice concerning non-master file assessments against [REDACTED] (hereinafter "[REDACTED]") as a non-petitioning spouse. It is our understanding that the Service mailed a notice of deficiency to [REDACTED] at an address in [REDACTED], [REDACTED] on [REDACTED]. The [REDACTED] had been divorced prior to the issuance of the notice of deficiency, and no longer resided at that address. Although the notice of deficiency was returned undeliverable, [REDACTED] timely filed a petition in the Tax Court and the Service's determinations were upheld. Your office has requested our views as to whether the notice of deficiency was sent to [REDACTED]'s "last known address."

In Abeles v. Commissioner, 91 T.C. 1019, 1035 (1988), the Tax Court overruled its own long-standing precedent which had held that the filing of a return which is more recent than and which bears an address different from that appearing on the return under examination does not constitute notice of an address change, and adopted a new rule:

[W]e now hold that a taxpayer's last known address is that address which appears on the taxpayer's most recently filed return, unless respondent has been given clear and concise notification of a different address. For these purposes, however, we hold that a taxpayer's "most recently filed return" is that return which has been properly processed by an IRS service center [footnote omitted] such that the address appearing on such return was available to respondent's agent when that agent prepared to send a notice of deficiency in connection with an examination of a previously filed return. Further, we hold that the address for the more recently filed return is available to the agent issuing the notice of deficiency with respect to a previously filed return, if such address could be obtained by a computer generation of an IRS computer transcript using the taxpayer's TINs in the case of a separately filed return, or both taxpayers TINs in the case of a previously filed joint return.

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Furthermore, the Tax Court concluded that with respect to a joint return under examination, both the primary TIN and the spousal TIN must be availed of by the Service in checking for the address on the most recently filed return (joint or separate). In so holding, the Tax Court reiterated its earlier position that what is significant what respondent knew at the time the statutory notice was issued, and attributing to respondent information which respondent knew or should know, with respect to a taxpayer's last known address, through the use of its computer system. 91 T.C. at 1035.

On July 12, 1989 we received the IMF MCC Transcript for [REDACTED] (copy attached). The transcript is inconclusive as to whether an address other than that which the Service mailed the notice of deficiency was available to the Service at the time the notice was issued. It only shows that a name change was made after the notice was issued (second week in [REDACTED]). This seems to indicate that [REDACTED] may not have filed a joint return with [REDACTED] until [REDACTED] but it is not determinative of the question. Unfortunately, the module for years prior to [REDACTED] has been removed from the master transcript of account (copy attached) so we could not determine whether [REDACTED] filed a joint return prior to [REDACTED].

Additionally, attached is the master transcript of account for [REDACTED] (TIN: [REDACTED]) which reflects no entity. It is clear that [REDACTED] did not file a separate income tax return that would have constituted her most recently filed return. In order to determine whether the notice of deficiency was sent to [REDACTED]'s "last known address" a request for [REDACTED]'s [REDACTED], and [REDACTED] returns is necessary. Pursuant to a July 17, 1989 telephone conversation between Mr. Roth of your office and Mr. Fitzpatrick of our office, Mr. Roth will request the necessary returns to determine whether the Service was on notice of a new address for [REDACTED] at the time of issuance of the notice of deficiency.

Your office should be aware that the Service is given a reasonable amount of time to process address information into its computer system and unless the [REDACTED] return was filed with sufficient time to process it will not change [REDACTED]'s "last known address." See, e.g., Yusko v. Commissioner, 89 T.C. 806 (1987). The date which the [REDACTED] return was filed is also critical and should not be overlooked before any concession based on "last known address." Please verify whether the [REDACTED] return was filed prior to issuance of the notice with either a certified mailing receipt showing the date of filing from the taxpayer or by requesting the original return from the Service Center showing the date of filing.

If you have any questions concerning this advice, please contact Robert J. Fitzpatrick at FTS 566-3345.

MARLENE GROSS
Assistant Chief Counsel
(Tax Litigation)

By: 

HENRY G. SALAMY
Chief, Branch No. 4
Tax Litigation Division

Attachments:

IMF MCC Transcript (1)
Master Transcript of Account (3)